Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED

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CASE AND COMMENT

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A Fin De Siècle Question.

The people who contend that January 1, 1900, is the beginning of the twentieth century seem bound to prove the proverb that there are two sides to every question. Incidentally they are furnishing the rest of the world much amusement. The naked proposition that ninety-nine years make one century is not very attractive; but the theory that 1,899 years make nineteen centuries seems to be quite fascinating. It is amusing to see people of trained intellect struggling to establish such a proposition. Their delusion is, of course, due to the change in dates at the new year, by which the century is expressed as "1900," instead of "1800." We may well wonder if these people would also contend that the first cent added to $1,899 would be the beginning of the twentieth hundred dollars, instead of the beginning of the last dollar of the nineteenth hundred. To bolster up the patent absurdity of contending that less than one hundred years can make a century there has been evolved an equally absurd contention that the first year of the first century was not reckoned, but was designated by naught. Of course, no one can pretend to have any proof that such a reckoning of time was actually made, and, unless it can be shown that some sane human being has ever reckoned years, dollars, or something else in that way, this theory may be accepted as an unwitting contribution by sober people to the humors of the time.

Lawyers and Popular Government.

In the very interesting new work on "The Puritan Republic," the author, Daniel Wait Howe, points out that the lack of trained lawyers among the Puritans of Massachusetts Bay resulted in various evils, among which were the prevalence of unnecessary and trifling lawsuits, the tediousness and great length of their lawsuits, and the practice of consulting magistrates in advance of suit to get private opinions on *ex parte* statements out of court. But the greatest of these evil consequences resulting from the want of skilled lawyers was doubtless the lack of the influence of lawyers on public affairs. The dominent influence of the clergy, under which religious persecution became common and cruel, might have been held somewhat in check and its most terrible effects much mitigated if there had been a body of learned and able lawyers in the community, such as afterwards began to wield important influence for the good of the state.

The value of lawyers to the state as a potent influence toward a safe and sane public opinion has often been emphasized since De Tocqueville, in his acute and statesmanlike observations on American life, declared that, "when the American people is intoxicated by passion or carried away by the impetuosity of its ideas, it is checked and stopped by the almost invisible influence of its legal counselors." When tides of passion run high, the conservatism of the legal profession is like an anchor. When fads of spurious reform or fallacious and specious theories threaten to captivate the mass of the people, the trained intelligence

and leadership of many lawyers constitute a powerful influence for the preservation of sound judgment.

Laws to Protect the Flag.

The exalted place which the American flag holds in the hearts of the people is illustrated by the enactment of a statute prohibiting its use for advertising or commercial purposes. Such a statute grows out of a feeling that the flag is too sacred for mere mercenary uses. Whether the statute is wise or not, it indicates the peculiar reverence of the people for "the flag of the free."

The power of a state to make such a law is a subject of conflicting decisions. In the case of People *ex rel.* Neuman *v.* Weccord, 4 Chicago Law Journal, 429, it is held that such a law is a valid exercise of the police power. But in People *ex rel.* Hortigan *v.* Leibrandt, and in People *ex rel.* Sontag *v.* Kruse, 19 Law Register, 963, 32 Chicago Legal News, 114, the decisions are to the contrary. In the latter case three judges sat and one dissented. The majority held the statute unconstitutional, not only because of discrimination in exempting exhibitions of art from its provisions, but also on the broad ground that the use of the national flag or emblem for commercial purposes or as an advertising medium is not a subject for police regulation. This latter reason, if valid, would defeat every statute that could be passed on this subject and leave the flag entirely at the mercy of the mercenary. But this conclusion seems unsound. Assuming, as the court did, that the power of the state legislature in this matter is not restricted by reason of any exclusive or paramount Federal authority, what constitutional provision can we find that hinders the legislature from protecting the flag against misuse. The police power is not limited to the protection of health, morals, and safety in the narrow sense of those terms. It extends throughout the whole broad range of the common good and general welfare, as to which the legislature, subject to constitutional limitations, is itself the judge. "Every sovereign power possesses inherently unrestricted legislative power where the organic law imposes no restraint," says the supreme court of Illinois in Munn *v.* People, 69 Ill. 93. "It has never been questioned, so far as I know," says Redfield, Ch. J., in Thorpe *v.* Rutland & B. R. Co. 27 Vt. 140, "that the American legislatures have the same unlimited power in regard to legislation which resides in the British Parliaments, except where they are restrained by written constitutions." In the absence of any explicit provision of the Constitution prohibiting such legislation, it is strange indeed if the government cannot protect its own flag from being put to unseemly uses by its own citizens. A flag created by public law, for public purposes, which is in a peculiar sense the property of the nation and everywhere recognized as a symbol of the national authority, is in the very nature of things, like the government coin or the government seal, a proper subject of police regulation and protection. A nation which could not protect its flag against improper use by its own citizens would be an object of deserved contempt.

It may be that there is no such misuse of the flag as to demand any legislation on the subject. But the government must certainly have the right to interfere when necessary to prevent any such private and mercenary use of the flag as may tend to lower its dignity and lessen its potency as an inspiration to patriotism.

Omnipotence of Congress.

The Baltimore Underwriter, discussing the power of Congress to enact legislation to regulate insurance business under the constitutional power to regulate commerce, says: "The assertion by Congress of its power to regulate insurance corporations as a 'means to carry into effect' its control over interstate and foreign commerce would be held to be 'a question of legislative discretion, not of judicial cognizance.'" It denies that the Supreme Court can interfere on the ground that the subject does not constitute commerce, and says: "Congress must define the subject upon which it is to exercise the vested power of legislation."

This contention does not seem sound. It would give Congress unlimited power to extend its legislation over all subjects whatever, without any check by the Supreme Court. Merely broadening the definition of the various subjects committed to it by the Constitution would be the simple method by which Congress could extend the scope of its legislation over all subjects now reserved to the states. For instance, Congress might proceed to declare that marriage is a commercial relation, and proceed to legislate on the whole subject of marriage and divorce as a regulation of commerce. So, by its mere *ipse dixit*

and the definition of the word "commerce," it might bring under its authority all matters of criminal law, the descent of real property, and every other subject of local law.

If Congress should attempt to give such definitions to the words of the Constitution as would obliterate the line between state and Federal legislation, and thereby assume to regulate all matters now belonging to the states, it would be a gross usurpation, which would doubtless be speedily condemned by the Supreme Court. But the jurisdiction of the Supreme Court to hold such legislation unconstitutional would depend on its power to decide the fundamental question whether or not the subject of any attempted exercise of a constitutional power of legislation is or is not within the range of that power. In case of an attempted exercise of the commercial power to regulate insurance, marriage, or the law of real property, the court must have the power to determine whether or not the subject-matter constitutes commerce, or else the constitutional provisions are binding only so far as Congress chooses to regard them.

The theory that Congress can make new definitions of words in the Constitution, and thereby enlarge its own powers, is capable of extended application. Under it everything that Congress might choose to denominate "due process of law" or "just compensation," would immediately become sufficient to satisfy the constitutional guaranties of due process of law and of just compensation for private property. Such a *reductio ad absurdum* is sufficient to dispose of the theory that Congress, and not the Supreme Court, has the final authority to decide on the meaning of the words of the Constitution.

Fire Risk in Schools.

The most criminal risk ever taken by people of intelligence continues day by day in respect to the lives of the pupils of many of our schools. Some of them are packed into third and fourth stories of school buildings, with entirely inadequate means of escape in case of sudden fire. Doubtless the parents are not callous to the danger of their children, but they cannot sufficiently realize its magnitude. There are schools in which an outbreak of fire might any day result in a holocaust of the brightest and best youth of the community. Legislation ought to make it impossible for such schoolhouses to be occupied until they are provided with fire protection and fire escapes so complete that an accidental fire could not greatly endanger the life of any pupil.

Boarding schools present the most extreme illustrations of these criminal risks. There have been several such school buildings burned, from which the escape of all the pupils was little less than miraculous. There are other boarding schools now occupied by scores, if not hundreds, of pupils, who go to bed each night in great peril of being burned before morning. The most rigorous legislation is needed to prevent the occupation of any building as a boarding school, dormitory, or lodging house of any sort for numerous students without an official certificate that it is safe for the occupants. It is a beneficent policy that requires fire escapes on factories in some states to protect the lives of workmen while they are awake and at work, and New York, at least, has made similar provision for some public school buildings. But it is glaringly absurd to do this and at the same time to ignore the extraordinary danger that threatens the lives of students in boarding schools in case of fire while they are asleep. Some of the buildings thus occupied were built when little attention was given to the danger of fire, and are so constructed that swift and complete destruction would be inevitable if fire broke out.

Taught by the Boers.

England is learning a hard lesson just now by the process of events in South Africa. The whole world is surprised at the military skill of the Boers, and the British face to-day the gravest situation they have confronted for a generation. The despised Boers, to whom Great Britain somewhat arrogantly attempted to dictate, have suddenly brought the British Empire into a critical position.

The right and the wrong of the controversy between British and Boers are in much dispute. Partisans of each put all the blame on the other. But some of the clearest headed Englishmen at home, as well as in this country, have all along strongly condemned the warlike course of the British government, and have believed that substantially all that could rightfully be demanded might be obtained within reasonable time without war. It seems to be a general belief in this country that, if there had been no other motive on the part of the British than merely to secure justice to the Uitlanders, there would have been

no war. But with that motive mingled the old smart of the defeat of Majuba Hill and the vision of one great British dominion in South Africa. On their part the Boers appeared obstinate enough to make a peaceful solution difficult. Both sides seem to share the blame of an unnecessary war.

The outcome must be awaited with extraordinary interest. The final victory of the Boers can hardly be thought possible without such international complications or new insurrections as would seriously cripple the power of Great Britain and reduce her rank among the nations. Americans have much sympathy with the desperate courage and independent spirit of the Boers. Some feel that England, though having much justice in her demands, was largely to blame for causing the war, and ought to suffer much. Others believe the Boers ought to win. But the hearts of the overwhelming majority of American people would be with England if any real danger should threaten to weaken her empire or destroy her prestige among the nations. The hard lesson England is learning, and which every great nation has much need to remember, is that war, even against a supposedly weak nation, may have unexpected perils. An overbearing disposition to dictate to the weak is too common among nations as well as individuals. The great powers are too ready to disregard the rights of a weak nation and force concessions from it, as they have recently been doing in China. The spirit of aggression needs to be tempered by a wholesome fear of the possible penalties to be paid for its exercise. The Boers, by their startling object lesson, are sharply teaching the nations of the world that war, even against a little nation, is too dangerous to be entered upon lightly.

Powers and Status of Consuls.

The quickened public interest in all international matters and the increasing importance of our international relations arouse new interest in the status and powers of consuls. Their jurisdiction and powers do not seem to have been anywhere treated at all comprehensively until it was done in the annotation to the Massachusetts case of Telefsen *v.* Fee, as published in 45 L. R. A. 481. Consuls have frequently exercised criminal jurisdiction at the suggestion of masters of vessels, but the courts condemn the practice and hold that consuls have no power whatever to punish seamen for misconduct on board a vessel. Yet, since the act of Congress of 1840, they may, with the aid of local authorities, confine refractory seamen in extreme cases, where it seems necessary for the safety of the ship and for the purpose of sending the seamen home for trial. In China, and formerly in Japan, an American consul has jurisdiction by treaty agreement of all civil cases brought by Chinese against Americans. In other non-Christian countries the consuls exercise the functions of municipal magistrates for their countrymen as a part of the authority delegated to them as administrative and judicial agents of the nations. Controversies between seamen and the masters of foreign ships are generally deemed to be within the exclusive jurisdiction of the foreign consul, as was held in Telefsen *v.* Fee, if he chooses to assert his authority. Consuls also generally inquire into complaints and pass upon discharges of seamen and enter their findings on the ship's roll. They also have power to cause a survey of disabled vessels, and to look after the cargoes of stranded vessels. The United States consuls are also authorized to appoint inspectors to investigate complaints as to the seaworthiness of vessels. But they have no power to adjust claims made against prize vessels. In the exercise of their non-judicial powers consuls may assert claims against the government of the country in which their consulate is situated on behalf of their countrymen, administer on the estates of their countrymen who die within their consulates, give certificates for proof of various matters, and take depositions, affidavits, and acknowledgments of deeds and powers of attorney. But they have as such no diplomatic functions.

The exemptions and privileges of a consul, which are treated at length in a note to Wilcox *v.* Luco (Cal.) 45 L. R. A. 579, do not include diplomatic or other privileges of a foreign minister or ambassador, but consuls are entitled to safe conduct as representatives of their nation, and an assault upon one of them may be punished as an offense against the law of nations. They are not exempt from jurisdiction of the courts of the country over them either in civil or in criminal cases, unless by provision of treaty. The Supreme Court of the United States has original jurisdiction of actions against consuls, but that is not held to be exclusive. The jurisdiction of the circuit courts of the United States of actions against them has been maintained where the citizenship of the parties was such as to confer jurisdiction independent of the question of con-

are provided with fire protection and fire l tice to the Uitlanders, there would have been

sulship, while the district courts are expressly given jurisdiction in civil actions against consuls by U. S. Rev. Stat. § 563, cl. 17. The jurisdiction of state courts in such cases has been somewhat in doubt, but is upheld in Wilcox v. Luco, in the absence of any claim of the consul to have the case heard in the United States court, and other cases have upheld the state jurisdiction without any such qualification. Various other exemptions of consuls are stipulated in the different treaties. They include exemptions from obligation to appear as witnesses, exemptions from taxation, and exemptions from military and jury duty. It is also held that temporary residence of a consul abroad does not cause loss of domicil. It is, of course, obvious that the status in a country of a consul from a foreign country must depend in the main on treaty provisions. But the treaties with the different countries have great similarity in respect to consuls, and their status and powers have become in most respects well understood, though there are still many particulars as to which there is some uncertainty.

Power of Equity to Protect Political Right.

The commonly asserted theory that equity has no power to protect any rights except rights of property was discussed at some length in the December, 1897, number of CASE AND COMMENT, in which the conclusion was drawn that, if the rule could be said to be established, it had many exceptions. One phase of the question is presented by the cases respecting the power of equity to protect political rights. A recent decision in the superior court of Cincinnati, in *Re* Contempt Proceedings against Grear, 6 Ohio Nisi Prius Reports, 312, denies an injunction to prevent the use of certain ballots in a prospective primary election on the ground that they were unlawfully marked by a certain device. The opinion by Jackson, J., elaborately discusses the question and reviews other authorities. It seems to accord with the weight of the authorities, though the cases are in some conflict. In State *ex rel.* Adams County v. Cunningham (Wis.) 15 L. R. A. 561, the jurisdiction to grant an injunction against giving notice of election under an unconstitutional statute was upheld, but the discussion was not directed to the power of a court of equity in such cases so much as it was to the question of the jurisdiction of the Supreme Court under a constitutional provision authorizing it to issue certain writs, including that of injunction, and to hear and determine the same. In State *ex rel.* Lamb v. Cunningham (Wis.) 17 L. R. A. 145, the above case was followed, but here again the question of the power of equity was assumed rather than decided. In Denny v. State *ex rel.* Basler (Ind.) 31 L. R. A. 726, the jurisdiction to grant an injunction in a similar case was again assumed without discussion. On the other hand, in Fletcher v. Tuttle, 151 Ill. 41, 25 L. R. A. 143, it was expressly decided that chancery has no jurisdiction to protect purely political rights, such as those in respect to public elections. The court declared that State v. Cunningham, *supra*, was decided under a different judicial system, and that in Wisconsin the power of the supreme court to issue an injunction did not seem to be limited to purely equitable cases, but seemed to extend to all cases affecting the sovereignty of the state, its franchise or prerogatives, or the liberties of the people. The court said the doctrine is clearly established that equity will not interfere to determine questions concerning the appointment or election of public officers or their title to office, as such questions are of a purely legal nature and cognizable only by courts of law. In the more recent case of Kearns v. Hawley (Pa.) 42 L. R. A. 235, an injunction against adding names to a political committee or striking names therefrom was refused where the committee did not own or pretend to own or derive any benefit from anything of value held by them in common, although the members of the committee were elected at primary elections and the law recognized political parties so far as to prescribe the duties of officers at such primaries. But in this case the decision was not based so much on the theory that the rights were political as that they were the rights of members of a voluntary and unincorporated association, with which the courts would not interfere, and the court said: "It may be, if this bill had aimed to prevent a threatened violation of law by any of these officers, it could have been maintained."

Proximate Cause and Boundary Lines.

Men can hardly reason more illogically than to say that the negligent starting of a fire which spreads to lands of other owners may be the proximate cause of damages to the adjacent premises, but not of damages to any which are separated by lands of an interven-

men for misconduct on board a vessel. Yet, [risdiction independent of the question of con

ing proprietor from those on which the fire started. It is not within the power of reason to explain how it is that starting a fire at a certain point may be the proximate cause of burning property at any distance therefrom provided the same person owns all the land, but may not be the proximate cause of damage done much nearer if the fire in reaching it has crossed a boundary line. Why the cause of a fire must exhaust itself when it reaches the second line fence, or the unmarked line which limits the domain of the adjacent proprietor, it is impossible to explain. The title to a strip of land over which fire runs has the same relevancy to the matter of the proximate cause of the destruction of property thereon as the politics or religion of the owner. Yet in Ryan *v.* New York Cent. R. Co. 35 N. Y. 210, Hunt, J., delivering the opinion of the court in such a case, held that no one but an abutting owner could recover for damages by the spreading of fire from the premises of one who negligently started it, and the New York court of appeals has recently followed that decision in the case of Hoffman *v.* King, 160 N. Y. 618, 32 Chicago Legal News, 135, although the opinion admits that the limitation may be somewhat arbitrary. A dissenting opinion, filed by Vann, J., in which Parker, Ch. J., concurs, says: "In populous places an arbitrary rule founded upon division lines may be necessary when a broad view of the subject is taken, in order to prevent ruin to the owners of real estate. Such a rule, however, must exist owing to necessity rather than logic, for it would make one who negligently kindled a fire on his own premises liable to the owner of lands immediately adjoining, even if his building extended 100 feet, but not to several owners of different buildings upon precisely the same land. It is impossible to say logically that the first 100 rods of woodland burned over, if owned by one man, must be paid for, but not if owned by two or ten men." The last sentence clearly shows the absurdity of the rule. Under the New York decision a railroad company would be wise to provide by gift or otherwise for the separate ownership of a few feet of unimproved land on each side of its right of way. Its liability for fires would be thereby substantially abolished.

The opinion of the majority in the Hoffman Case says: "The drought, atmosphere, and wind were the principal agents assisting the fire in its work of destruction, and were the intervening causes of the damage." But the court fails to explain how these new causes happened to intervene at the second boundary line instead of the first, or why similar reasoning would not apply when a fire started in one room of a building spreads to other rooms. The spread in such a case would depend upon the inflammability of the building materials and the existence of wind, as well of elevator shafts, hollow walls, or other passages through which strong draughts may be created. Yet the courts do not seem to have questioned that such a fire would be the proximate cause of the loss of the entire building, although there may be an implication in the present decision that they would decide to the contrary if each room in the building had a separate owner. In Bradford Glycerine Co. *v.* St. Marys Woolen Mfg. Co. (Ohio) 45 L. R. A. 658, the supreme court of Ohio recently held in case of damage by explosion of nitroglycerine that recovery might be had for injured property on premises which were not adjacent to those on which the explosive substance was stored.

The real reason why a majority of the court in the later New York case feel constrained to follow this admittedly arbitrary rule seems to be the necessity of finding some limit of liability by which a person who has been negligent in starting a great conflagration may be saved from utter financial ruin. Some limit to the amount of liability in such case may be desirable. But, when the limit to be fixed, as in this case, is an arbitrary one without any foundation in reason, it must be the business of the legislature, and not of the courts, to establish it.

Index to Notes

IN

LAWYERS' REPORTS, ANNOTATED.

Book 45, Parts 4 and 5.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

such cases so much as it was to the question of the jurisdiction of the Supreme Court under a

adjacent premises, but not for damages to any which are separated by lands of an interven-

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Among the New Decisions.

Carriers.

A passenger alighting from a train and proceeding at once toward the station is held, in Atlantic City R. Co. *v.* Goodin (N. J.) 45 L. R. A. 671, to be not necessarily chargeable, as matter of law, with the duty to look and listen for trains before stepping on the track which he must cross to reach the station.

Commerce.

On the question what constitutes an arrival of intoxicating liquors within the state within the meaning of the Wilson act, it is held, in State *v.* Holleyman (S. C.) 45 L. R. A. 567, that intoxicating liquors purchased in another state at a distillery, which the purchaser is himself transporting in his private conveyance, have not arrived in the state, so as to become contraband under state statutes, until he reaches his home, although they are actually in the state.

Conflict of Laws.

The right of an Illinois assignee for creditors to bring an action against all the domestic shareholders of an Illinois corporation is sustained, in Stoddard *v.* Lum (N. Y.) 45 L. R. A. 551, on the ground that the cause of action is on contract and is based on the principles of the common law, instead of the statutory provisions in Illinois.

intervening causes of the damage." But the

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Constitutional Law.

A statute prohibiting the playing of baseball on Sunday where a fee is charged, under penalty of a fine, is sustained in State v. Hogriever (Ind.) 45 L. R. A. 504, and the fact that the penalty is larger than that imposed for hunting, fishing, quarreling, and for common labor, does not make it violate the constitutional guaranty of equal privileges and immunities.

Consuls.

The jurisdiction of the consul of Sweden and Norway at Boston, over a claim for wages by one of the crew of a Norwegian vessel, who has left the ship at that port, is held, in Telefsen v. Fee (Mass.) 45 L. R. A. 481, to be exclusive of any jurisdiction in the first instance of the courts of the state by virtue of a treaty provision.

The jurisdiction of a state court to render judgment against a foreign consul residing in the state, in a civil action, is sustained in Wilcox v. Luco (Cal.) 45 L. R. A. 579, where he does not claim his right to have the case heard in the United States court.

Contracts.

A contract for the services of an unlicensed stallion is held, in Smith v. Robertson (Ky.) 45 L. R. A. 510, to be invalid under statutes making the owner liable to indictment and fine for failure to procure a license.

Corporations.

A statute authorizing the assessment of fully paid-up stock is held, in Enterprise Ditch Co. v. Moffit (Neb.) 45 L. R. A. 647, to be unconstitutional as applied to persons who had previously become owners of fully paid-up stock.

The right of a corporation to dispose of its property by a majority vote, against the protest of a minority stockholder, is sustained in Phillips v. Providence Steam Engine Co. (R. I.) 45 L. R. A. 560, when there is no unfairness, oppression, or fraud, and the company is unable to go on with its business.

A single transaction involving a purchase of coal on credit, with a guaranty by a third person, is held, in Delaware & H. Canal Co. v. Mahlenbrock (N. J.) 45 L. R. A. 538, not to constitute the transaction of any business within the meaning of a statute as to business of foreign corporations.

Courts.

The power of a court to prevent a foreign assessment insurance company from forfeiting a policy or enforcing extortionate assessments is denied in Taylor v. Mutual Reserve Fund Life Asso. (Va.) 45 L. R. A. 621, on the ground that this would constitute an attempt to control the management of the internal affairs of a foreign corporation. The court in this case refused to construe the contract of the parties because it could not enforce any relief.

Criminal Law.

The summary arrest of a convict who has violated his parole, and his summary return or remandment to servitude or imprisonment under his sentence, was held, in Fuller v. State (Ala.) 45 L. R. A. 502, to constitute no violation of the constitutional guaranties governing the arrest and trial of criminals.

The right of an accused to be confronted with the witnesses against him is held, in State v. Mannion (Utah) 45 L. R. A. 638, to be violated by ordering him to be placed 24 feet away from the prosecuting witness, where he could not see or hear the witness or see the jury, although this was done to protect the witness, who was a small girl, from being intimidated by him.

Emblements.

Crops planted by a person in possession under a bond for title after he has refused to comply with his contract to purchase, and the vendor, having tendered a good title, has begun an action to foreclose the bond, are held, in Sievers v. Brown (Or.) 45 L. R. A. 642, to belong to the vendor.

Explosions.

Nitroglycerine being a substance highly explosive and dangerous, it is held, in Bradford Glycerine Co. v. St. Marys Woolen Mfg. Co. (Ohio) 45 L. R. A. 658, that anyone who stores it on his own premises is liable for injuries caused to surrounding property by its exploding, even if he does not violate any provision of the law regulating the storage, and is not chargeable with any negligence.

ciples of the common law, instead of the statutory provisions in Illinois.

Fences.

A barbed-wire fence running diagonally from the corner of a house across the grass on private premises to a street corner, which is put there to prevent people from taking a short cut across the grass after plain wire has been found ineffectual for that purpose, is held, in Quigley *v.* Clough (Mass.) 45 L. R. A. 500, not to make the owner liable to a person who, by mistake, after dark, left the line of the street, walked upon the grass, and was injured by the fence.

Goodwill.

The right to have a forced sale or transfer of a goodwill, such as that of a partnership of dentists, in a suit to wind up the partnership, when the goodwill is based upon professional reputation and standing or upon business connections, is denied in Slack *v.* Suddoth (Tenn.) 45 L. R. A. 589, although such goodwill might be the subject of a voluntary sale.

Homicide.

The right to plead self-defense for homicide in a difficulty which the accused himself provoked is denied in Foutch *v.* State (Tenn.) 45 L. R. A. 687, only when the difficulty was provoked with intent to kill the adversary or do him great bodily harm, or to afford a pretext for wreaking malice upon him.

Infants.

The earnings of a minor child who has been emancipated in good faith by his father are held, in Flynn *v.* Baisley (Or.) 45 L. R. A. 645, to be protected from the father's creditors, and to constitute a good consideration for a conveyance to the minor by his father.

The jurisdiction of equity over the estates of wards in chancery is held, in Richards *v.* East Tennessee, V. & G. R. Co. (Ga.) 45 L. R. A. 712, to extend to the legal as well as the equitable estates of the infants, where there is a trust for the life of their mother but the infants have the legal fee in remainder.

Insurance.

That insanity is included in the word "sickness" as used in the by-laws of a beneficial society is held in Robillard *v.* Société St. Jean Baptiste de Centreville (R. I.) 45 L. R. A. 559.

Judgment.

A judgment by default in an action by a physician to recover compensation for professional services is held in Jordahl *v.* Berry (Minn.) 45 L. R. A. 541, to constitute no bar to an action by the patient against the physician for malpractice in the performance of the services.

Landlord and Tenant.

The lien for rent on the goods of the assignee of a lease under the Kentucky statutes is held, in Louisville Trust Co. *v.* Gaertner (Ky.) 45 L. R. A. 513, to be unaffected by a transfer of the lease made by his assignee for creditors.

Libel.

A statement in a recommendation of a former employee, that, "like many others, he left our services during the strike," is held, in Kansas City, M. & B. R. Co. *v.* Delaney (Tenn.) 45 L. R. A. 600, not to be libelous or actionable *per se* so as to constitute a cause of action without special damages.

A libelous publication about a deceased person is held, in Bradt *v.* New Nonpareil Co. (Iowa) 45 L. R. A. 681, to give the mother of the deceased no right of action.

A communication made in good faith in the course of his duty, by the cashier of a bank, by indorsing on a dishonored note held for collection that it was a forgery, is held, in Caldwell *v.* Story (Ky.) 45 L. R. A. 735, to be a privileged communication which does not create any liability for libel, though it is intimated that the maker may be liable for slander if he falsely declares that the note is forged.

Limitation of Actions.

A statute reviving a barred remedy so as to impair a title to property which has vested under the statute of limitations is held, in McEldowney *v.* Wyatt (W. Va.) 45 L. R. A. 609, to be unconstitutional as a deprivation of property without due process of law, but it is held otherwise with the revival of a cause of action which does not affect any vested right of property.

Master and Servant.

The mere fact that a servant acts unlawfully, wilfully, or wantonly is held, in Balti-

person, is held, in Delaware & H. Canal Co. v. Mahlenbrock (N. J.) 45 L. R. A. 538, not to constitute the transaction of any business

ing, even if he does not violate any provision of the law regulating the storage, and is not chargeable with any negligence.

more Consolidated R. Co. v. Pierce (Md.) 45 L. R. A. 527, insufficient to show that he is no longer in his master's employment, so as to relieve the latter from liability for injuries thereby caused; but the question in such case is generally one for the jury.

The failure to deliver fragments necessarily amputated from the body of an injured person whose injuries result in his death, to his representatives, is held, in Doxtator v. Chicago & W. M. R. Co. (Mich.) 45 L. R. A. 535, to create no liability on the part of a railroad company in whose service the injury occurred, where other employees summoned ambulance and surgeon, and the injured person, who requested that he should not be taken home, was taken by those in charge of the ambulance to a hospital, where the fragments cut from his body were cremated according to the custom of the hospital, without the knowledge or direction of the company's surgeon.

Employees working more than eight hours per day in violation of a statute are held, in Short v. Bullion, Beck & C. Min. Co. (Utah) 45 L. R. A. 603, to have no right of action for the extra services, either on the contract or on a *quantum meruit*.

Municipal Corporations.

The extent of the territorial limits of a municipality being a matter of legislative discretion which is not subject to judicial revision, it is held, in Kimball v. Grantsville City (Utah) 45 L. R. A. 628, overruling a prior decision, that the collection of taxes on property within the city limits cannot be restrained on the ground that the property was outside the range of municipal benefits, and therefore not subject to municipal taxation.

Negligence.

One whose horses show signs of becoming unmanageable while being driven at a distance from home, though they have hitherto been gentle and easily managed, is held, in Creamer v. McIlvain (Md.) 45 L. R. A. 531, to be entitled to continue the trip home instead of being compelled to leave them at a place where he has temporarily stopped.

The owner of premises dangerous to trespassers is held, in Cooper v. Overton (Tenn.) 45 L. R. A. 591, to have no liability for injuries to trespassers, even if they are children, unless they are induced to enter the premises by something unusual and attractive placed upon it by the owner or with his knowledge and permitted to remain there.

Partnership.

Implied authority of a partner to make accommodation indorsements in the name of his firm is held, in Bank of Monongahela Valley v. Weston (N. Y.) 45 L. R. A. 547, to be created where for about ten years the other members of the firm knew that he was using the firm name for the accommodation of his friends and took no effective steps to prevent it, though often remonstrating with him in private and accepting his promise to stop the practice.

Postoffice.

A subcontractor who has agreed with the contractor to carry mails in accordance with a contract between the United States and the contractor, in which the latter assumes liability to any person aggrieved by his default, is held, in Lawton v. Chilton (Wis.) 45 L. R. A. 616, to have no liability upon the contract to a postal employee for personal injuries caused by the subcontractor's negligence, though a liability in tort may exist.

Public Corporations.

The provision of a charter of a public corporation created for public purposes, such as that of education, whereby fees, forfeitures, and penalties accruing to a certain county are granted to the corporation, is held, in Watson Seminary v. County Court of Pike County (Mo.) 45 L. R. A. 675, not to constitute a contract within the constitutional protection, but to be subject to change at the will of the legislature.

Public Improvements.

A person in possession of land under a lease for 99 years renewable forever, in whose name the property stands for taxation, is held, in St. Bernard v. Kemper (Ohio) 45 L. R. A. 662, to be so far the owner as to authorize him to unite in a petition for street improvements; and in such case the signature of the lessor is held unnecessary.

Taxes.

The right of the legislature to authorize taxation for the purpose of making gifts or paying gratuities to private individuals is denied in Bush v. Board of Supervisors of Orange County (N. Y.) 45 L. R. A. 556,

ness" as used in the by-laws of a beneficial society is held in Robillard v. Société St. Jean Baptiste de Centreville (R. I.) 45 L. R. A. 559.

Master and Servant.

The mere fact that a servant acts unlawfully, wilfully, or wantonly is held, in Balti-

in case of an attempt to raise money by taxation to be paid to drafted men for services in the Civil War or for commutation money paid by them.

The taxation of a city for its franchise is upheld in Newport v. Com. (Ky.) 45 L. R. A. 518, in case of a franchise to operate waterworks, as it is held that the city in respect to them occupies the position of a private corporation.

Taxes imposed on a nonresident whose property is not in the state, such as a tax on credits in nonconcrete form, are held, in Liverpool & L. & G. Ins. Co. v. Board of Assessors (La.) 45 L. R. A. 524, to be invalid.

Usury.

The exemption of national banks from the penalties of usury prescribed by state statutes is held, in Gadsden v. Thrush (Neb.) 45 L. R. A. 654, to be strictly limited by the provisions of the Federal statute, and not to extend to a note held by a bank merely as collateral to another note and mortgage, when the question arises on foreclosure of the mortgage.

Vendor and Purchaser.

A purchaser of land who accepts, without objection until after the time for performance is past, a search or abstract of title which is in fact defective, is held, in Moot v. Business Men's Investment Asso. (N. Y.) 45 L. R. A. 666, to have no right to reject the title merely because of such defect in the abstract, if the title offered is in fact good.

Waters.

The draining of the underground sources of a surface stream by pumping water from wells to supply a city reservoir is held, in Smith v. Brooklyn (N. Y.) 45 L. R. A. 664, to render the city liable to the owner of the land through which the stream naturally flows, although the city is the owner of the land on which the wells are located.

Wills.

The inability of the attesting witnesses to a will to remember the facts stated in the attestation clause is held, in *Re* Thompson (Ill.) 45 L. R. A. 682, to be insufficient to prevent the probate of the will, if the signatures of testator and the witnesses are proved, and there is nothing to disprove the recitals in the attestation clause.

Writs.

The privilege from arrest conferred upon members of Congress by the Federal Constitution is held, in Worth v. Norton (S. C.) 45 L. R. A. 563, not to extend to the service of summons in a civil action, unaccompanied by arrest, or to a member of Congress who is absent on private business, and who is not in attendance or going to or returning from a session of Congress.

Recent Articles in Law Journals and Reviews.

"Liability of Municipal Corporations as upon Implied Contracts."—33 American Law Review, 707.

"The Supreme Court of the United States."—33 American Law Review, 641.

"The State Punishment of Crime."—33 American Law Review, 731, 25 Law Magazine and Review, 1.

"The Jurisdiction of Equity for the Rescission of Contracts."—33 American Law Review, 702.

"Conclusiveness of a Domestic Judgment as Affected by the Rank of the Court Which Rendered It."—33 American Law Review, 665.

"Some Possible Reforms in State and Local Taxation."—33 American Law Review, 685.

"Bills of Particulars in Actions Based upon Negligence."—49 Central Law Journal, 362.

"The Line of Private Ownership of Lands Running to Water."—49 Central Law Journal, 346.

"Are State Rules of Evidence, other than Statutory, not in Conflict with Federal Legislation, Binding on Federal Courts Sitting in That State?"—60 Albany Law Journal, 297.

"Legal Education in Canada."—19 Canadian Law Times, 261.

"The Legislation and Local Government of King Alfred." I.—11 The Green Bag, 596.

"Constitutional Rights of Policy Holders."—11 The Green Bag, 571.

"The Lawyer in Literature."—11 The Green Bag, 553.

"Was the Confederate Soldier a Rebel?" I.—11 The Green Bag, 545.

"Maitre Fernand Labori." (With Portrait.) 11 The Green Bag, 541.

by something unusual and attractive placed upon it by the owner or with his knowledge and permitted to remain there.

paying gratuities to private individuals is denied in Bush *v.* Board of Supervisors of Orange County (N. Y.) 45 L. R. A. 556,

"The Law of Common Carriers of Goods as Developed by the Supreme Court of Ohio."—5 Western Reserve Law Journal, 141.

"Public Property and Local Improvements." 7 American Lawyer, 520.

"The Assessment of Special Franchises."—60 Albany Law Journal, 277.

"Present Scope of Certiorari."—49 Central Law Journal, 406.

"The Torrens System of Land Transfers."—2 The Brief, 38.

"The Political Significance of the Case of Marsbury *v.* Madison."—2 The Brief, 3.

"The Suffrage Clause in the New Constitution of Louisiana."—13 Harvard Law Review, 279.

"New Jersey and the Great Corporations," II.—13 Harvard Law Review, 264.

"The Permanence of Parliamentary Government."—13 Harvard Law Review, 256.

"The Constitutional Power of the Courts over Admission to the Bar."—13 Harvard Law Review, 233.

"Notes on the Early History of Legal Studies in England."—25 Law Magazine and Review, 51.

"Christian Science and the Law."—17 Medico-Legal Journal, 175–196.

"Contributory Negligence."—19 Canadian Law Times, 274.

"Are Municipal Corporations Liable to De Jure Officers for Salary Paid to De Facto Officers."—49 Central Law Journal, 446.

"Legislation as Affecting Child Life."—3 Law Notes (Am.) 171.

"Garnishment of Foreign Corporations."—49 Central Law Journal, 423.

New Books.

"The Law of Presumptive Evidence." (Including Presumptions both of Law and of Fact and the Burden of Proof both in Civil and Criminal Cases.) Reduced to Rules. By John D. Lawson. 2d ed. St. Louis. The Central Law Journal Co. 1899. 1 vol. $6.

This second edition of Lawson's well-known work on Presumptions will be welcome. It not only adds a great number of new cases, but shows what rules laid down by the author have been approved by the courts of last resort. This matter of presumptions constitutes an important branch of the law, which is worthily treated in this book.

"The Puritan Republic of the Massachusetts Bay in New England." By Daniel Walt Howe. Indianapolis. Bowen-Merrill Co. 1 vol.

This book gives a vivid picture of the conditions of Puritan life and of the character of the people. The picture is as faithful as it is vivid. The author does not believe in all the beliefs of the Puritan fathers, but thoroughly believes in them, and has made a distinct contribution to their history.

"Wit and Humor of Bench and Bar." By Marshall Brown. (T. H. Flood & Co., Chicago, Ill.) 1 vol. $4.

"The Indiana Insurance Laws." By John A. Finch. (Rough Notes Co., Indianapolis, Ind.) 1 vol. $3.

"Humor of the Court Room, or Jones *v.* Johnson, a Lawful Comedy." By Philip Lindsley. (John T. Worley & Co., Dallas, Tex.) 1 vol. $1.

"Merrick's Civil Code of Louisiana." Vol. 1, to art. 2129, inclusive. (F. F. Hansell & Bro., Ltd., New Orleans.) $10.

"Laws of our New Possessions, the Philippines, Puerto Rico, also Cuba, Mexico, etc." By Clifford Stevens Walton. (W. H. Lowdermilk & Co., Washington, D. C.) 1 vol. $6.25.

"Barrows on Negligence." (In the Horn Book Series.) (West Publishing Co., St. Paul, Minn.) 1 vol. $3.75.

"Index Digest of the Weekly Notes of Cases, vols. 1–42 inclusive." By Henry Budd. (Kay & Bro., Philadelphia, Pa.) 1 vol. $7.50.

"The Law of Account." By Sydney E. Williams. (Boston Book Co., Boston, Mass.) 1 vol. $3.

The Humorous Side.

A RECOMMENDATION.—The jury in a prosecution for indecency rendered the following verdict: "We, the jury, find the prisoner at the bar guilty without mercy, and recommend him to the extreme penalty of the law."

A QUESTION OF CLASSIFICATION.—An Illinois attorney, in his brief, comments on a witness as follows: "Practice has come to distinguish between an expert and a liar; otherwise we should not dignify this witness by calling him an expert. . . . It is with great self-control that we longer speak of him as belonging to that class."

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I.—11 The Green Bag, 545.

"Maitre Fernand Labori." (With Portrait.) 11 The Green Bag, 541.